

ETHICAL ISSUES IN WAR: AN OVERVIEW

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Introduction

Violent conflict among human beings is, unfortunately, one of the great constants in our history as a species. As far back as we can see, the human species has engaged in war and other forms of organized violence. But it is equally true that, as far back as human culture and thought have left written records, humans have thought about morality and ethics. Although cultures vary widely in how they interpret death and killing from a moral and religious perspective, every human culture has recognized that taking human life is a morally grave matter; every human culture has felt the need to justify taking of life in moral and religious terms.

In the modern world, a large body of ethical and legal thought attempts to limit, constrain and to establish criteria that sanction the use of violence in the name of the state and society. Through the mechanisms of the Hague and Geneva Conventions, the Charter of the United Nations, military manuals such as the US Army's "Law of Land Warfare," and similar documents, modern governments and militaries attempt to distinguish "just war" and just conduct in war from other types of killing of human beings. Morally conscientious military personnel need to understand and frame their actions in moral terms so as to maintain moral integrity in the midst of the actions and stress of combat. They do so in order to explain to themselves and others how the killing of human beings they do is distinguishable from the criminal act of murder.

Attempts to conduct warfare within moral limits have met with uneven success. Many cultures and militaries fail to recognize these restraints, or do so in name only. The realities of combat, even for the best trained and disciplined military forces, place severe strains on respect for those limits and sometimes cause military leaders to grow impatient with them in the midst of their need to "get the job done." In the history of the US Army, events like My Lai in Vietnam show that even forces officially committed to just conduct in war are still capable of atrocities in combat—and are slow to discipline such violations.

Despite these limitations, the idea of just war is one to which the well-led and disciplined military forces of the world remain committed. The fact that the constraints of just war are routinely overridden is no more a proof of their falsity and irrelevance than are similar points about morality: we know the standard, and we also know human beings fall short of that standard with depressing regularity. The fact of moral failure, rather than proving the falsity of morality, points instead to the source of our disappointment in such failures: our abiding knowledge of the morally right.

Because of the importance of just war thinking, the general history, key provisions, and moral underpinnings of just war are things which every military person, and especially every senior leader, must understand and be able to communicate to subordinates and the public. It is important that senior leaders understand just war more deeply and see that the positive laws of war emerge from a long moral tradition which rests on fundamental moral principles. This essay will provide that history, background and moral context of ethics and war.

Background of Just War Theory

Most cultures of antiquity attempted to place some restraints on war. All recognized that there are some causes of war which are justifiable and others which are not. All recognized that some persons are legitimate objects of attack in war and others are not. All recognized that there were times, seasons, and religious festivals, etc. during which warfare would be morally wrong or religiously inappropriate.

The roots of modern international law come from one specific strand of thought emerging out of Antiquity: the Christian Roman Empire that took shape after the conversion to Christianity of the Emperor Constantine in the year 312 AD. Although there were important ideas of restraint in war in pre-Christian Greek and Roman thought and indeed in cultures all over the world, it is the blend of Christian and Greco-Roman thought that set the context of the development of full-blown just war thinking over a period of centuries.

Christianity before this time had been suspicious of entanglement in the affairs of the Empire. For the first several centuries of the movement, Christians interpreted the teaching of Jesus in the Sermon on the Mount and other places quite literally, and saw themselves as committed to pacifism (the refusal to use force or violence in all circumstances). Although many appreciated the relative peace, prosperity and ease of travel the Empire's military force made possible, Christians felt prayer on behalf of the Emperor was the limit of their direct support for it.

Much changed with Constantine. For many, war fought on behalf of a "Christian Empire" was a very different thing than war on behalf of a pagan one. Further, during the century following Constantine's conversion, the Empire began to experience wave after wave of invasion from the north, culminating in the fall of the city of Rome itself in 410 AD—a mere hundred years after Constantine.

It was in that context that Christian thinkers, most notably St. Augustine, a doctor of the church and bishop of Hippo in North Africa, first worked out the foundations of Christian just war thought. History, Augustine argued, is morally ambiguous. Human beings hope for pure justice and absolute righteousness. Augustine firmly believed that the faithful will experience such purity only at the end of time when God's kingdom comes. But until that happens, we will experience only justice of a sort, righteousness of a sort.

What passes for justice will require force and coercion, since there will always be people who strive to take more than their share, to harm and steal from others. In that world, the peacemakers who are blessed are those who use force appropriately and mournfully to keep as much order and peace as possible under these conditions. The military officer is that peacemaker when he or she accepts this sad necessity. Out of genuine care and concern with the weak and helpless, the soldier shoulders the burden of fighting to maintain an order and system of justice which, while far short of the deepest hopes of human beings, keeps the world from sliding into complete anarchy and chaos. It is a sad necessity imposed upon the soldier by an aggressor. It inevitably is tinged with guilt and mournfulness. The conscientious soldier longs for a world where conflict is unnecessary, but sees that the order of well-ordered states must be defended lest chaos rule.

For Augustine and the tradition that develops after him, Just War is an attempt to balance two competing moral principles. It attempts to maintain the Christian concern with non-violence and to honor the principle that taking human life is a grave moral evil. But it attempts to balance that concern with the recognition that, the world being what it is, important moral principles, and that protection of innocent human life requires the willingness to use force and violence.

As it wends its way through history, the tradition of Just War thought grows and becomes more precise and more elaborate. In that development, it faces new challenges and makes new accommodations.

The Spanish in the New World, for example, were challenged to rethink the tradition as they encountered and warred against indigenous populations. Are such wars, too, governed by moral principles? Are all things permitted against such people? Or, it was seriously debated, are they even people, as opposed to some new kind of animal? Through that discussion came an expansion of the scope of Just War principles to populations that did not share common cultures.

After the Protestant Reformation, as wars raged throughout Europe in the attempt to restore religious unity to “Christendom,” some thinkers (most notably Hugo Grotius) argued that Just War must be severed from a distinctively Christian religious foundation. Human reason instead must provide a system for the restraint of war that will be valid despite religious difference, valid *etsi deus non daretur*, even if God did not exist! In other words, or Grotius and others, human reason is a commonality all people share, regardless of religious, ethnic, and cultural differences. That rationality, rather than revealed religion or religious authority, could suffice to ground moral thinking about war.

As a result of that “secularization” of Just War thinking in Europe, the foundation was laid for the universal international law of the present international system. As a result, the foundation was laid for that system in Natural Law (moral rules believed to be known by reason alone, apart from particular religious ideas and institutions) and in the *jus Gentium*, the “law of Peoples,” those customary practices which are widely shared across cultures. In current international law these accepted practices are called “customary international law” and set the standard of practices of “civilized nations.”

Since virtually all modern states have committed themselves by treaty and by membership in the United Nations to the principles of international law, in one sense there is no question of their universal applicability around the globe. But the fact that the tradition has roots in the West and in the Christian tradition does raise important multicultural questions about it.

How does one deal with the important fact that Muslims have their own ways of framing moral issues of war and conflict and even of the national state itself which track imperfectly at best with the Just War framework? How does one factor into one’s thinking the idea of “Asian Values” which differ in their interpretation of the rights of individuals and the meaning of the society and state from this supposedly universal framework? What weight should the fact that much of the world, while nominally nation-states on the model established by the Peace of Westphalia in 1648 in Europe, are in reality better described as “tribes with flags”? How does one deal with the fact that, in much of the world, membership in a particular ethnic group within an internationally recognized border is more an indicator of one’s identity than the name of the country on one’s passport?

All of these questions are subject of intense scholarly debate and practical importance. All have very real-world applications when we think about the roots of conflict around the modern world and attempt to think about those conflicts in the ways many of the participants do. But for our purposes, we will need to set them aside in favor of making sure we understand the Just War criteria as they frame United States military policy and the existing framework of international law.

This limitation of focus is justified not only by the limitations of time, but also by legal reality. Whatever one might want to say about the important cross-cultural issues posed above, it remains true that the United States and its allies around the world are committed by treaty, policy, and moral commitment to conduct military operations within the framework of the existing Just War criteria. That fact alone makes it important that strategic leaders possess a good working knowledge of those criteria and some facility in using them to reason about war.

Ideally, however, strategic leaders will also have some grasp of the ongoing debate about cultural diversity and the understanding of war in fundamentally differing cultural contexts as well.

The Purposes of the Just War Framework

The framework of principles commonly called “Just War Criteria” provide an organized schema for determining whether a particular conflict is morally justified. As one might imagine, any such framework will inevitably fall short of providing moral certainty. When applied to the real world in all its complexity, inevitably persons of intelligence and good will, can, and do disagree whether those criteria are met in a given case.

Furthermore, some governments and leaders lie. No matter how heinous their deeds, they will strive to cast their actions in just war terms to provide at least the appearance of justification for what they do. If hypocrisy is the tribute that vice pays to virtue, it is testimony to the moral weight of the just war principles that even the most extreme lies follow the shape of just war principles. Just war language provides the shape of the lie even the greatest war criminals must tell. Rare indeed is the aggressor or tyrant willing to declare forthrightly the real causes and motives of their actions.

The twin realities of real-world complexity and the prevalence of lying about these matters suggest the importance not only of *knowing* the just war criteria as a kind of list, but also of skillful and careful reasoning using the just war framework as a strategic leader competency. Only if a leader is capable of careful and judicious application of just war thinking can he or she distinguish valid application of just war thinking from specious and self-serving attempts to cloak unjust action in its terms.

The Just War Framework

Moral judgments about war fall into two discrete areas: the reasons for going to war in first place, and the way the war is conducted. The first is traditionally called *jus ad bellum*, or justice of going to war, and the second *jus in bello*, or law during war. Two

interesting features of this two-part division are that different agents are primarily responsible for each, and that they are to a large degree logically independent of each other.

Judgments about going to war are, in the American context, made by the National Command Authority and the Congress. Except at the highest levels where military officers advise those decision-makers, military leaders are not involved in those discussions and bear no moral responsibility for the decisions that result. Still, military personnel and ordinary citizens can and do judge the reasons given for entering into military conflict by those decision makers and make their own determinations whether the reasons given make sense or not. A morally interesting but difficult question arises concerning one's obligations and responsibilities when one is convinced that recourse to war is not justified in a particular case.

Just conduct in war concerns the rules of engagement, choice of weapons and targets, treatment of civilian populations and prisoners of war and so forth. These concern the "nuts and bolts" of how the war is actually conducted. Here the primary responsibility shifts from the civilian policymakers to the military leadership at all levels. Of course political leaders and ordinary citizens have an interest in and make judgments about how their troops conduct themselves in war. Militaries conduct themselves in light of national values, and must be seen as behaving in war in ways citizens at home can accept morally.

Modern war, usually fought in plain sight of CNN and other media, is for good and for ill especially subject to immediate scrutiny. Political leaders and ordinary citizens react to virtually every event and require of their leaders explanations for why they do what they do and conduct war as they do. This fact, too, indicates why strategic leaders must be adept in explaining clearly and honestly the conduct of their forces within the framework of the Just War criteria.

I turn now to a discussion of the criteria of Just War in some detail. These are the "tests" one uses to determine the justification of recourse to war in particular circumstances.

We begin with the criteria for judging a way just *ad bellum* (in terms of going to war in the first place). In detail lists of these criteria vary somewhat, but the following captures the essential elements:

1. Just Cause
2. Legitimate Authority
3. Public Declaration
4. Just Intent
5. Proportionality
6. Last Resort
7. Reasonable Hope of Success

Recall that the moral impulse behind just war thinking is a strong sense of the moral evils involved in taking human life. Consequently, the *ad bellum* tests of just war are meant to set a high bar to a too-easy recourse to force and violence to resolve conflict. Each of the "tests" is meant to impose a restraint on the decision to go to war.

Just Cause

Just Cause asks for a legitimate and morally weighty reason to go to war. Once, causes like “offended honor” or religious difference were considered good reasons for war. As it has developed, just war tradition and international law have restricted greatly the kinds of reasons deemed acceptable for entering into military confrontation. The baseline standard in modern just war thinking is *aggression*. States are justified in going to war to respond to aggression received. Classically, this means borders have been crossed in force. Such direct attacks on the territorial integrity and political sovereignty of an internationally recognized state provide the clear case of just cause, recognized in just war and in international law (for example, in the Charter of the United Nations).

Of course there are a number of justifications for war which do not fit this classic model. Humanitarian interventions, preemptive strikes, assistance to a wronged party in an internal military conflict in a state, just to name some examples, can in some circumstances also justify use of military force, even though they do not fit the classic model of response to aggression. But the farther one departs from the baseline model of response to aggression, the more difficult and confusing the arguments become.

As one moves into these justifications, the scope for states to lie and try to justify meddling in each others affairs grows. For that reason, international law and ethics gives an especially hard look at claims of just cause other than response to aggression already received. To do otherwise risks opening too permissive a door for states to interfere with each other’s territory and sovereignty.

Legitimate authority restricts the number of agents who may authorize use of force. In the Middle Ages, for example, there was the very real problem that local lords and their private armies would engage in warfare without consulting with, let alone receiving authorization from, the national sovereign.

In the modern context, different countries will vary in their internal political structure and assign legitimate authority for issues of war and peace of different functionaries and groups. In the American context, there is the unresolved tension between the President as Commander in Chief and the authority of Congress to declare war. The present War Powers Act (viewed by all Presidents since it was enacted as unconstitutional, but not yet subjected to judicial review) has still not clarified that issue. But while one can invent a scenario where this lack of clarity would raise very real problems, in practice so far the National Command Authority and the Congress have found pragmatic solutions in every deployment of American forces so far.

The **public declaration** requirement has both a moral purpose and (in the American context) a legal one. The legal one refers to the issue we were just discussing: the role of Congress in declaring war. As we all know, few twentieth-century military conflicts in American history have been authorized by a formal Congressional declaration of war. While this is an important and unresolved Constitutional issue for the US, it is not the moral point of the requirement.

The moral point is perhaps better captured as a requirement for delivery of an ultimatum before initiation of hostilities. Recall that the moral concern of just war is to make recourse to armed conflict as infrequent as possible. The requirement of a declaration or ultimatum gives a potential adversary formal notice that the issue at hand is

judged serious enough to warrant the use of military force and that the nation is prepared to do so unless that issue is successfully resolved peacefully immediately.

The **just intent** requirement serves to keep the war aims limited and within the context of the just cause used to authorize the war. Every conflict is subject to “mission creep.” Once hostilities commence, there is always the temptation to forget what cause warranted the use of force and to press on to achieve other purposes—purposes that, had they been offered as justifications for the use of force prior to the conflict, would have clearly been seen as unjustifiable. The just intent requirement limits war aims by keeping the mind focused on the purpose of the war. Although there are justified exceptions, the general rule is that the purpose of war is to restore the *status quo ante bellum*, the state of affairs that existed before the violation that provided the war’s just cause.

Proportionality is a common sense requirement that the damage done in the war should be worth it. That is to say, even if one has a just cause, it might be so costly in lives and property damage that it is better to accept the loss rather than to pay highly disproportionately to redress the issue. In practice, of course, this is a hard criterion to apply. It is a commonplace that leaders and nations are notoriously inaccurate at predicting the costs of conflict as things snowball out of control.

But here too, the moral point of just war criteria is to restrain war. And one important implication of that requirement is the demand for a good faith and well-informed estimate of the costs and feasibility of redressing grievances through the use of military force.

The requirement that war be the *ultima ratio*, the **last resort**, stems too from a commitment to restrict the use of force to cases of sad necessity. No matter how just the cause, and no matter how well the other criteria may be met, the last resort requirement acknowledges that the actual commencement of armed conflict crosses a decisive line. Diplomatic solutions to end conflicts, even if they are less than perfect, are to preferred to military ones in most, if not all cases. This is because the costs of armed conflict in terms of money and lives are so high and because armed conflict, once begun, is inherently unpredictable.

In practical reality, judging that this criterion has been met is particularly difficult. Obviously, it cannot require that one has done every conceivable thing short of use of force: there is *always* more one could think to do. It has to mean doing everything that seems to a reasonable person promising. But reasonable people disagree about this. In the Gulf War, for example, many (including Colin Powell) argued that more time for sanctions and diplomacy would be preferable to initiation of armed conflict.

The last requirement *ad bellum* is **reasonable hope of success**. Because use of force inevitably entails loss of human life, civilian and military, it is a morally grave decision to use it. The reasonable hope criterion simply focuses thinking on the practical question: if you’re going to do all that damage and cause death, are you likely to get what you want as a result? If you’re not, if despite your best efforts it is unlikely that you’ll succeed in reversing the cause that brings you to war, then you are causing death and destruction to no purpose.

An interesting question does arise whether heroic but futile resistance is ever justified. Some have argued that the long-term welfare of a state or group may well require a memory of resistance and noble struggle, even in the face of overwhelming odds. Since the alternative is acquiescence to conquest and injustice, might it justifiable

for a group's long term self-understanding to be able look back and say, "at least we didn't die like sheep"?

This completes the overview of the *jus ad bellum* requirements of just war. Recall that the categories and distinctions of the theory are not simple and clear. Neither individually nor together do they provide an algorithm that can generate a clear-cut and obvious judgment about a particular war in the minds of all fair-minded people.

On the other hand, it is important not to overemphasize the difficulty here. Although the language of just war is used by virtually all states and leaders in the attempt to justify their actions, not all uses are equally valid. Often it is not that difficult to identify uses that are inaccurate, dishonest, or self-serving. While there certainly are a range of cases where individuals of good will and intelligence will disagree in their judgments, there is also a good range where the misuse is transparent.

Recall, for example, Iraq's initial (and brief) attempt to justify its invasion of Kuwait on grounds that there had been a revolution in the Kuwaiti government and the new legitimate government of Kuwait had requested Iraq's fraternal assistance in stabilizing the new government. Had this story been true, of course, Iraq would have been acting in conformity with international law and just war tradition by being in Kuwait. It is important to note that Iraq did apparently feel obliged to tell a tale like this, since that itself is a perverse testimony to the need of states to attempt to justify their actions in the court of world opinion in just war terms. Of course the story was so obviously false that even Iraq stopped telling it in a matter of hours (how many of you even recall that they told it?).

My point in citing this example is to forestall an easy relativism. It is simple intellectual laziness to conclude that, because these judgments are hard and people disagree about them in particular cases, that the principles have no moral force or, worse, that all uses of them are mere window-dressing. In all moral matters, as Aristotle pointed out, it is a mark of an educated person not to expect more precision than the matter at hand permits. And in complex moral judgments of matters of international relations, one cannot expect more than thoughtful, well-informed and good-faith judgments.

Jus in bello

I turn now to the *jus in bello* side of just war thinking. As I noted above, except at the highest levels of the military command structure, officers do not make the decision to commit forces to conflict. The moral weight of those judgments lies with the political leadership and its military advisors. On the other hand, strategic military leaders, whether they are technically responsible for decisions to go to war or not, will often be placed in the position of justifying military action to the press and the people. Further, thoughtful officers will often feel a need to justify a particular use of force in which they participate to themselves. For all these reasons, therefore, facility with just war reasoning in both its dimensions (*jus ad bellum* and *jus in bello*) is a strategic leader competency.

The practical conduct of war is, however, the primary responsibility of military officers. They bear the responsibility for the training and discipline of military personnel. They issue the orders that determine what is attacked, with what weapons and tactics. They set the tone for how civilians are treated, how POW's are captured, confined and cared for. They determine how soldiers who violate order and the laws of war are

disciplined and what examples they allow to be set for acceptable conduct in their commands.

Because of this weight of responsibility, the officer at all levels must thoroughly incorporate thought about the *jus in bello* side of just war into standard operating procedure. It is an integral part of military planning at all levels, from the tactical issues of employing small units to the highest levels of grand strategy. United States policy, national and universal values, and political prudence combine to require officers at all levels to plan and execute military operations with a clear understanding of just war requirements.

The major moral requirements of just war *in bello* boil down to two: discrimination and proportionality. Together, they set limits in the conduct of war—limits on *who* can be deliberately attacked and on *how* war can legitimately be conducted.

Although we use the term “**discrimination**” almost wholly negatively (as in racial discrimination) the core meaning of the word is morally neutral. It refers to distinguishing between groups or people or things on the basis of some characteristic that distinguishes one group from another.

In the context of thought about war, the relevant characteristic upon which just war requires us to discriminate is **combatant status**. In any conflict, there are individuals who are combatants—actively engaged in prosecuting the war efforts—and there are non-combatants. The central moral idea of just war is that only the first, the combatants, are legitimate objects of deliberate attack. By virtue of their “choosing” to be combatants they have made themselves objects of attack and have lost that immunity from deliberate attack all human beings have in normal life, and which civilians retain even in wartime. I put “choosing” in quotes, of course, because we all know soldiers become soldiers in lots of ways, many of which are highly coerced. But they are at least voluntary in this sense: they didn’t run away. They allow themselves to be in harm’s way as combatants.

Of course, in modern war, there are lots of borderline cases between combatant and non-combatant. The definition of the war conventions is straightforward: combatants wear a fixed distinct sign, visible at a distance and carry arms openly. But in guerilla war, to take the extreme case, combatants go to great lengths to blend in to the civilian population. In such a war, discrimination poses very real practical and moral problems.

But the presence of contractors on a battlefield, or combat in urban environments where fighters (whether uniformed or not) are mixed in with civilian populations and property (to point to only two examples) also make discrimination between combatants and noncombatants challenging both morally and practically.

It is less critical to focus on the hard case than on the central moral point. War can only be conducted justly insofar as a sustained and good faith commitment is made to discriminate between combatants and non-combatants and to deliberately target only the combatants.

Of course civilians die in war. And sometimes those deaths are the unavoidable byproduct of even the most careful and conscientious planning and execution of military operations. Intelligence may be mistaken and identify as a military target something that turns out in the even to be occupied by civilians or dedicated only to civilian use. Weapons and guidance systems may malfunction, placing weapons in places they were not intended to go.

Just war recognizes these realities. It has long used the “principle of double effect” to sort through the morality of such events and justifies those which, no matter how terrible, do not result from *deliberate* attacks on civilians. Such accidents in the context of an overall discriminate campaign conducted with weapons that are not inherently indiscriminate are acceptable as “collateral damage.”

What is *not* acceptable in just war thinking is the deliberate targeting of civilians, their use as “human shields,” or use of indiscriminate warfare on populations. In practice this means choosing weapons, tactics and plans which strive to the limit of the possible to protect innocent civilian populations, even if they place soldiers at (acceptably) greater risk.

The other major requirement of *jus in bello* is **proportionality**. It, too, attempts to place limits on war by the apparently common-sense requirement that attacks be proportionate to the military value of the target. Judgments about these matters are highly contextual and depend on many dimensions of practical military reality. But a massive bombardment of a town, for example, would be disproportionate if the military object of the attack is a single sniper.

It is true, of course, that all sides violated these rules in World War II, especially in the uses of airpower. But the development of precision munitions and platforms for their delivery have, since that conflict, allowed the U.S. military to return to more careful respect for the laws of war, even in air war. Furthermore, it is a testimony to the moral need to do so that, at least in part, drove that development—along with the obvious point that munitions that hit what they’re aimed at with consistency and regularity are more militarily effective as well.

Conclusion

The moral tradition of just war, and its partial embodiment in the laws of war at any moment is part of on-going evolution. They represent a drive to make practical restraints on war that honor the moral claim of individuals not to be unjustly attacked while at the same time recognizing that use of military force in defense of individuals and values is sometimes a necessity.

All military officers charged with the grave moral responsibility of commanding and controlling military units and weapons must, if they are to conduct war morally, have a good working knowledge of the just war tradition and of the moral principles it strives to enshrine.

Above all, strategic leaders who set large-scale military policy, control training and organizational culture, and supervise the preparation of operational plans for national militaries need to understand and think in ways deeply conditioned by just war principles. Because their responsibility is so great and because the weapons and personnel under their control are capable of causing such destruction, they above all bear the responsibility to insure that those forces observe the greatest possible moral responsibility in their actions.

As I indicated above, no amount of knowledge of the terms and concepts of just war will make morally complex decisions miraculously clear. But clear understanding of the concepts of just war theory and of the moral principles that underlie them can provide clarity of thought and a way to sharpen one’s thinking about those choices.

If our military is to conduct itself in war in ways compatible with American national values, and if individual soldiers and officers are to be able to see themselves and their activities as morally acceptable, they must be able to understand the moral structure of just conduct in war. Further, it is imperative that they integrate that understanding into the routines of decisionmaking in military operations.

In the Gulf War, and in major operations since then, the language and concerns of just war are integrated increasingly into planning and execution of military operations. Military lawyers are fully integrated into modern targeting and operations planning cells of the US military. In light of those realities, facility in just war thinking is, indeed, a strategic leader competency. This paper is only an introduction to the terms and grammar of that thought. True facility in just war thinking will come from careful and critical application of its categories to the complexities of real life and real military operations.